

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS**

**LEXINGTON INSURANCE COMPANY AND
NATIONAL UNION FIRE INSURANCE COMPANY
OF PITTSBURGH,**

Plaintiffs

v.

**VIRGINIA SURETY COMPANY, INC.,
Defendant.**

**CIVIL ACTION
No. 04-11109 RGS**

**MOTION OF PLAINTIFFS, LEXINGTON INSURANCE COMPANY AND NATIONAL UNION INSURANCE
COMPANY OF PITTSBURGH, PENNSYLVANIA, TO CLARIFY ORDER ON CROSS-MOTIONS FOR
SUMMARY JUDGMENT**

Plaintiffs, National Union Fire Insurance Company of Pittsburgh, PA ("National Union") and Lexington Insurance Company ("Lexington"), hereby move for an Order clarifying the Court's Order of May 3, 2007, on the parties' cross-motions for Summary Judgment, pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rule 56.1. Specifically, Plaintiffs seek to clarify that the Court's Order applies only to the various insurance policies issued by National Union as part of the "NCOPO Program", and not to any "Post Program" policies that were issued by Lexington on Stand Alone Excess Liability Policy forms. Plaintiffs seek to clarify that the Stand Alone Excess policies issued by Lexington are true excess policies and, therefore, Lexington does not have any obligation to pay either defense or indemnity to the mutual insureds of Lexington and Virginia Surety, who are insured under Lexington's Stand Alone Excess policies, until the Virginia Surety policies are exhausted by the payment of the \$250,000 per occurrence limits of liability of the Virginia Surety policies.

Said Motion is based on the Memorandum of Law in support hereof, and the Memorandum of Law, Statement of Undisputed Facts pursuant to Local Rule 12.1 and supporting evidence previously filed by Plaintiffs in support of their Motion for Summary Judgment.

Dated: May 14, 2007

Respectfully submitted,
Defendants, ***Lexington Insurance Company
and National Union Fire Insurance
Company of Pittsburgh, PA.***
By their attorneys,

/s/ Gerald S. Frim

Mark E. Cohen [BBO #089800]

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CERTIFICATE OF SERVICE

I, Gerald S. Frim, hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on May 14, 2007.

Dated: May 14, 2007

/s/ Gerald S. Frim

Gerald S. Frim

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